IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

Cr.Appeal 658 of 2000
Decided on: 28.09.2007

State of H P Appellant

Versus

Rajeev Kaushal **Respondent**

Coram:

The Hon'ble Mr.Justice Surinder Singh.J.

Whether approved for reporting ?[1] *No.*

For the appellant : Shri D.S.Nainta, Deputy Advocate General.

For the Respondent Shri Vikas Rathore, Advocate.

Surinder Singh, J. (Oral)

Heard and gone through the record.

By this appeal, the judgment of acquittal, passed by the Judicial Magistrate Ist Class Nurpur, District Kangra (H.P.) in Cr. Case No.58-III/93, registered against the respondent, for offences punishable under Section 279 and 304-A of the Indian Penal Code, has been assailed by the appellant-State on law and facts.

Prosecution case, in brief, is that on 20.6.1993 at about 3.00 p.m. the respondent was allegedly driving his *Yamaha* Motor Cycle along with pillion rider on a public highway rashly and

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment ? yes***

negligently, endangering the human life and dashed against Anil Kumar, who sustained injuries and later succumbed to the injuries.

In order to prove its case, the prosecution has examined Kishore Chand (PW2) and Pardeep Kumar (PW6), the alleged eye witnesses. Ex.PW4/A is the statement of PW6, recorded under section 154 Cr.P.C. which disclosed the earlier version that Anil Kumar struck against the motor cycle of the respondent. The respondent immediately applied the brakes and took the injured to the hospital, whereas Kishore Chand (PW2) has wrongly deposed in the court that there were three persons riding on the motor cycle whereas Pardeep Kumar (PW6) has testified on oath that there were only two persons riding on the motor cycle. The complainant has explained that Anil Kumar (deceased) had suddenly appeared from an Alley from where neither the motor-cyclist was visible nor he was visible to the motor-cyclist. Kishore Chand (PW2) though he is alleged to be an eye witness but he was confronted with his statement Ex.D-1, recorded by the police under Section 161 Cr.P.C., where this fact was not mentioned, therefore, it was an improvement in his statement and his presence on the spot has become doubtful. PW6 Pardeep Kumar has only stated that the motor cyclist was in a speed. It is established in law that the speed is not the criterion to prove the rash and negligent driving by

the motorist. It is only criminal negligence or rashness which is sine-qua-non to prove a case under sections 279 or 304-A of the Indian Penal Code. The learned trial court, in the above circumstances had relied upon the decision of the Supreme Court, rendered in ***Mahadeo Hari Lokre vs The State of Maharashtra:*** 1972 Cri.L.J.49, whereby in almost similar circumstances, a pedestrian suddenly crossed a road, without taking note of the approaching vehicle, and without the driver becoming aware of it, the driver of the said vehicle could not save the accident, therefore, he was not held to be negligent in such a case.

In the instant case also, keeping in view statement of PW6 supra the deceased was neither able to see the motor cyclist nor the motor cyclist could see the deceased, suddenly darted against the front wheel of the motor cyclist, which caused the accident. It has also come in evidence that the motor cyclist had immediately applied the brakes and halted it but in that consequence Anil Kumar had sustained the injuries and died later. In these circumstances and also following the ratio of the aforesaid judgment of the Hon'ble Apex Court, in my considered opinion, basis for findings of acquittal recorded by the trial court are not unreasonable. Therefore, it requires no interference by this Court. Accordingly, the appeal is

dismissed. The respondent is discharged of the bail bonds, entered upon by him at any stage, during the proceedings of the case.

Sept. 28, 2007 (Surinder Singh),J.
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